

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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LINDA MARGULES and JONATHAN  
MARGULES,

Plaintiffs-Appellants,

v

WHOLE FOODS MARKET, INC., d/b/a  
MERCHANTS OF VINO,

Defendant-Appellee.

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UNPUBLISHED

August 4, 2005

No. 252290

Washtenaw Circuit Court

LC No. 03-000013-NO

Before: Cooper, P.J., and Fort Hood and R.S. Gribbs\*, JJ.

MEMORANDUM.

Plaintiffs Linda and Jonathan Margules appeal as of right from an order granting defendant Whole Foods Market, Inc.'s motion for summary disposition pursuant to MCR 2.116(C)(1) based a lack of personal jurisdiction. We reverse and remand for further proceedings consistent with this opinion. This appeal is being decided without oral argument pursuant to MCR 2.114(E).

Plaintiffs filed a negligence action against Whole Foods Market, Inc., a foreign corporation, after Ms. Margules fell in the parking lot of a Merchants of Vino store. After some difficulty and the issuance of a second summons, plaintiffs served process on Edward Jonna, the agent listed on Department of Consumer and Industry Services documents relating to Merchants of Vino. The jurisdictional dispute in this case revolves around the actual identity of the named defendant. Defendant asserts that Whole Foods Market, Inc. is a Texas corporation with a registered agent located in Texas and does not do business in Michigan. Whole Foods Market Group, Inc., however, is registered to do business in Michigan and has a registered agent in Bingham Farms.

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\* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

This Court reviews de novo a trial court's decision on a motion for summary disposition.<sup>1</sup> Whether a trial court has personal jurisdiction over a party is a question of law, which we also review de novo.<sup>2</sup> While a plaintiff bears the burden of establishing jurisdiction, the plaintiff need only make a prima facie showing of jurisdiction to defeat a defendant's motion for summary disposition.<sup>3</sup> In reviewing a motion for summary disposition brought under MCR 2.116(C)(1), we consider the documentary evidence in a light most favorable to the nonmoving party.<sup>4</sup> A trial court may properly exercise limited personal jurisdiction over a foreign defendant if exercising such jurisdiction is consistent with due process—i.e., is fair and reasonable—and the defendant comes within the long-arm statute.<sup>5</sup>

Plaintiffs contend that the trial court's dismissal of their case was premature. We agree. It would be unfair to hail a party to Michigan to conduct discovery "to find out whether the party should be haled [sic] to Michigan to defend the suit."<sup>6</sup> However, a court has the discretion to order further discovery before making its determination when there is a reasonable chance that factual support for the plaintiff's position will be revealed.<sup>7</sup>

In this case, there is a reasonable chance that plaintiffs could establish after discovery that Whole Foods Market, Inc. and Whole Foods Market Group, Inc. are connected, or even the same entity. Plaintiffs' attorney submitted an affidavit asserting that upon receipt of the complaint, defense counsel stated that he was going to get local counsel and asked for an extension. During this call, defense counsel never contended that process had been served on the wrong party. In fact, the affidavit indicates that defense counsel claimed to represent both Whole Foods Market, Inc. and Whole Foods Market Group, Inc. Defendant submitted a document from the Secretary of State for the State of Texas indicating that Whole Foods Market, Inc. is a Texas corporation whose registered agent was located in Houston, Texas. However, that document did not refute the allegation that defendant conducted business in Michigan. In fact, the Whole Foods Market website indicates that there are four stores in Michigan. As the actual connection between the named defendant and Whole Foods Market Group, Inc. is still unclear, the trial court erred in granting summary disposition without allowing some discovery regarding defendant's contacts with the state of Michigan.<sup>8</sup>

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<sup>1</sup> *Oberlies v Searchmont Resort Inc*, 246 Mich App 424, 426; 633 NW2d 408 (2001).

<sup>2</sup> *Id.* See also *Jeffrey v Rapid American Corp*, 448 Mich 178, 184; 529 NW2d 644 (1995).

<sup>3</sup> *Jeffrey*, *supra* at 184; *Oberlies*, *supra* at 427.

<sup>4</sup> *Jeffrey*, *supra* at 184; *Oberlies*, *supra* at 427.

<sup>5</sup> *Jeffrey*, *supra* at 184-186.

<sup>6</sup> *Oberlies*, *supra* at 440 n 2.

<sup>7</sup> *Id.*

<sup>8</sup> Defendant also moved for summary disposition on the basis that the second summons was improperly issued and that plaintiffs' claims were barred by the statute of limitations. As the trial court did not consider these grounds and the record was not developed on these issues, we decline to review them at this time.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jessica R. Cooper  
/s/ Karen M. Fort Hood  
/s/ Roman S. Gibbs